

Fergus County Land Use Policy



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TABLE OF CONTENTS:

<u>INTRODUCTION</u>	<u>3</u>
<u>PREAMBLE</u>	<u>4</u>
<u>SCHOOLS AND EDUCATION</u>	<u>5</u>
<u>BUSINESS AND INDUSTRY</u>	<u>5</u>
<u>AIRPORT AFFECTED AREA</u>	<u>5</u>
<u>FORESTRY</u>	<u>#</u>
<u>WILDLIFE/ENDANGERED SPECIES</u>	<u>#</u>
<u>TOURISM AND RECREATION</u>	<u>#</u>
<u>MINING, NATURAL RESOURCES, RENEWABLE ENERGY</u>	<u>#</u>
<u>AGRICULTURE</u>	<u>#</u>
<u>WATER RESOURCES</u>	<u>#</u>
<u>APPENDICES:</u>	
APPENDIX "A" – CUSTOMS AND HISTORY	#
APPENDIX "B" – 1872 MINING LAW	#
APPENDIX "C" – WILDERNESS ACT	#
APPENDIX "D" – BISON RESOLUTION	#

INTRODUCTION:

The Fergus County Land Use Policy is the county land use plan developed by the Fergus County government to guide the use of lands and resources in Fergus County and to protect the rights of the private landowners.

Federal and State lands make up a substantial part of Fergus County. The nature and intent of the county's land use policy is to protect the customs and cultures of county citizens through protection of private property rights, the facilitation of a free market economy, and the establishment of a process to ensure self-determination by Fergus County residents.

This policy addresses land use management issues directly and is intended to be used as a positive guide to assist federal and state land management agencies in their development and implementation of land use plans and management actions. Fergus County and its citizens support the continued multiple use of federal and state lands in Fergus County. Therefore, in compliance with federal statutes, federal and state agencies to the extent bound by federal law and regulation shall inform local governments of all pending actions affecting local communities and citizens and coordinate with them in the planning and implementation of those actions. The Fergus County Commission, when affected by such actions, shall be consulted and coordinated with in accordance with the constitutions and Laws of Montana and the United States and the Charter of Fergus County.

Finally, in compliance with federal and state law, including but not limited to the National Environmental Policy Act, the Federal Land Management and Policy Act of 1976 and the National Forest Management Act, all federal and state agencies shall consider, to the maximum extent required by law, the Fergus County Land Use Policy and coordinate with the County Commission for the purpose of planning and managing federal and state lands within the geographic boundaries of Fergus County, Montana.

The Fergus County Commission can amend and add to this policy at any given time and if any part of the Policy is held invalid such invalidity does not affect other parts of the Policy.

PREAMBLE:

We, the people of Fergus County, State of Montana, accept, support, and sustain the Constitution of the United States and of the State of Montana. We have demanded through our elected legislature and governor that the federal and state governments comply with the constitution of the United States, Article One, Section Eight, which lists: (1) the specific powers of congress; (2) things forbidden to Congress; and (3) things forbidden to the States. These rights are empowered by Amendment X which says, “The powers not delegated to the United States by the Constitution nor prohibited by it to the States are reserved to the States respectively or the people.” That the Fifth and Fourteenth Amendments to the United States Constitution provides that private property shall not be taken for a public use without payment of just compensation and without due process. That the Presidential Executive Order 12630 was enacted and requires federal agencies to analyze the economic effects or takings implications of their proposed policies, decisions, rules, and regulations on the private property, private property rights and investment backed expectations of individual citizens. That the purpose of the Civil Rights Act, 12 U.S.C. is to protect the citizens of the United States from acts which “injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the constitution or laws of the United States.”

Further, we reaffirm the fundamental rights of mankind as enumerated in the Declaration of Independence and acknowledge the limited nature of government as intended by the nation’s founding father. Based on these cherished traditions, we declare that all natural resource decisions affecting Fergus County shall be guided by the principles of protecting private property rights, protecting local customs and cultures, maintaining traditional economic structures thorough self-determination, and opening new economic opportunities through reliance on free markets. Resource decisions made in this manner will enhance environmental quality.

SCHOOLS AND EDUCATION

Fergus County believes in the continuation of quality education for all children, while recognizing changes in educational needs and the limitations of funding.

GUIDELINES:

1. Fergus County recognizes the need for mandatory identification of all public land ownership and/or jurisdiction for all lands in Fergus County on a yearly basis.
2. Fergus County will protect the original interpretation and intent of public and school lands to fund public education.
3. Fergus County will protect and promote private ownership of lands.
4. Fergus County school districts will continue to have control of their long-term policies.

BUSINESS AND INDUSTRY

Fergus County recognizes that business and industry are vital to its economy. Therefore, it is the policy of Fergus County to promote the continuation of a sustainable industrial/business climate by promoting economic opportunity, relying on self-determination, and ensuring open markets conditions.

GUIDELINES:

1. Land use policies, set forth herein, shall be informed by local government on a county-wide basis, rather than federal or state governments.
2. Fergus County maintains that sufficient water should be available for county-wide agricultural, business, urban, and industrial uses but protected from pollutants.
3. Fergus County believes in the promotion of multiple uses of land and natural resources protecting the ability of agriculture and industry to utilize and develop those resources to their best economic potential in an environmentally sound manner.

AIRPORT AFFECTED AREA

The Lewistown Municipal Airport is an important part of the local economy in the Central Montana area. Fergus County promotes public health, safety and general welfare of the airport users and property within the vicinity of the airport, by addressing the effects of noise, height of structures and trees and land use in the designated areas.

GUIDELINES:

1. Land use polices designated in the Lewistown Municipal Airport Affected Area Regulations should be incorporated into any state or federal land use polices or regulations.

FORESTRY

The customs and cultures associated with timber and wood products production in Fergus County is necessary to the livelihood and well-being of its citizens. It is the policy of Fergus County to protect timber resources and promote the continuation of an economically viable and sustainable wood products industry.

GUIDELINES:

1. To the extent required by statute, local, state and federal agencies must comply with Fergus County's weed management plan.
2. As required by federal law and regulation, federal and state government shall consult with Fergus County before setting policies, thus taking into account local concerns.
3. Fergus County recognizes the need for more intensive management of state and federal lands to identify lands for high forest productivity; using modern techniques to utilize and promote timber growth, wildlife, and livestock grazing.
4. State, federal, or local governments should not be able to deny or restrict timber harvesting on private lands.
5. Fergus County endorses the planning efforts of any governmental agency in promoting healthy forests which involves timber harvesting.

WILDLIFE/ENDANGERED SPECIES

Fergus County shall promote wildlife opportunities compatible with local customs and cultures and within the constraints of private property rights and local self-determination.

GUIDELINES:

1. State and federal agencies furnishing wildlife habitat must take on management of those species and the control of wildlife populations, Fergus County supports the requirement that state and federal wildlife management agencies assume financial responsibility, including depredation to private property by said species.

2. Fergus County encourages federal and state agencies to manage their wildlife populations in Fergus County taking into consideration of local economics, heritage, cultures, and private property rights.
3. Fergus County shall support realistic sustainable wildlife population levels allowing for recreational hunting of game animals as a management tool for population control. The property rights of individuals is recognized as more important than fish, wildlife, and endangered or threatened species.
4. Fergus County supports no net loss of livestock grazing AUM's for any permit due to increasing wildlife population and habitats. If there is an increase in available public habitat for wildlife and game numbers are allowed to increase, there will be a proportionate increase in livestock AUM's. If an agency is considering increasing the number of wildlife in an area, the potential change in livestock AUM's should be coordinated with the Fergus County Commissioners.
5. Pursuant to the 5th Amendment of the US Constitution, there will be no "taking without just compensation" of private property rights to create protected habitat for fish, wildlife, and threatened or endangered species.
6. As required by law, any state or federal agency will coordinate with the Fergus County Commissioners and Planning Office if considering declaration of or introduction of an endangered species.
7. Realizing that Fergus County relies on the multiple use of public lands for recreation, livestock grazing, logging, fishing, and mining and that these uses are sustainable and renewable resources, Fergus County shall promote multiple uses and shall oppose the creation of wilderness designations which impede economic opportunities.

TOURISM AND RECREATION

Fergus County recognizes that the development of its recreation resources is essential to its long term economic and cultural viability. Fergus County promotes recreational and cultural opportunities compatible with local customs and cultures within the constraints of private property rights and local self-determination.

GUIDELINES:

1. Fergus County's stance will be to retain adequate legal access for multiple uses of public lands.
2. Fergus County will endeavor to promote better understanding and communication regarding legal access to public lands and the legal description of those public lands.
3. Fergus County supports and encourages historic tourism/recreation – i.e. rodeos, fairs, and winter recreation.
4. Hunting and fishing are part of Fergus County's customs and cultures. The Fergus County Land Use Policy supports hunting and fishing rights.

MINING, NATURAL RESOURCES, & RENEWABLE ENERGY

Fergus County recognizes that the development of its abundant mineral, renewable energy and natural resources are economically desirable. It is the policy of Fergus County to promote long term availability and responsible development of its minerals, renewable energy, and natural resources.

GUIDELINES:

1. Fergus County's policy will be to assure that mining will enjoy Constitutional opportunities provided by law, the multiple use concepts, and protect private property rights. The policy endorses the 1872 Mining Law concepts of self-initiation, right of access to mineral land (with consideration of surface ownership), diligent development, security of tenure, and the rights of the small miner. (Appendix B: Summary of 1872 Mining Law)
2. Fergus County recognizes that mining, renewable energy, and natural resource development has been and continues to be an important social and economic part of Fergus County and must be allowed to continue in an environmentally and socially responsible manner. Fergus County will encourage the education of the public regarding the importance of mining, renewable energy, and natural resource development to its economy and the free enterprise system, the value to and uses of extractive minerals, renewable energy, and natural resource development in our society, and the effect of legislative and regulatory activities on mining, renewable energy, and natural resource development.
3. Fergus County endorses the compliance by mining, renewable energy, and natural resource development interests of all applicable laws and regulations, terms and conditions of operating permits, and sound reclamation practices.
4. Fergus County will endorse policy to ensure that no undue restraints are placed on mining within historic mining areas and districts in Fergus County.
5. Fergus County will endorse policy to ensure that no undue restraints are placed on natural resource development in Fergus County.
6. Fergus County will endorse policy to ensure that no undue restraints are placed on renewable energy development in Fergus County.

AGRICULTURE

The customs and cultures associated with agricultural production in Fergus County are necessary to the livelihood and well-being of its citizens. Therefore, it is the policy of Fergus County to protect agricultural land and promote the continuation

of agricultural pursuits by protecting private property rights, relying on self-determination, and ensuring open market conditions.

GUIDELINES:

1. Fergus County supports the protection of private property rights including the historical use of the land by individuals to produce food and fiber without undue regulation.
2. Fergus County believes all land use decisions should take into account the effect on the economy with recognition of the fact that agricultural production is the largest segment of our economy and affects other area businesses, services, schools, and our tax base.
3. Fergus County opposes “takings” or “condemnations” without just compensation and in local control versus outside mandates in regard to, but not limited to, environmental concerns, water uses, and endangered species.
4. Fergus County supports the “multiple use” concept on public land and believes there should be “no net gain” of public lands within Fergus County.
5. Fergus County will not endorse any federal or state monument, wilderness, or wildland designations unless it has support of the Fergus County constituents and the Fergus County Commissioners.
6. Fergus County believes in a policy in accordance with Montana Code Annotated, that no agricultural or farming operations, place, establishment, or facility or any of its appurtenances of the operation thereof is or becomes a public or private nuisance because of the normal operations as a result of changed residential or commercial conditions in or around its location if the farming operation, place, establishment, or facility has been in operation longer than the complaining resident or landowner has been in possession of the property.
7. Fergus County also recognizes that all state and federal agencies must work in cooperation with the Fergus County Commission prior to enacting any new or making changes in land designations. Fergus County will consider any state & federal range management plans or guidelines that are already in place.

WATER RESOURCES

Fergus County recognizes that the protection and development of its water resources are essential to its short and long term economic and cultural viability. Fergus County shall recognize, within the context of customs and cultures, the use and development of private rights and shall require, to the extent mandated by law, full compliance in the acceptance and enforcement of such designations, and final adjudication of existing rights in a timely manner.

GUIDELINES:

1. The protection of existing water rights and the protection of historic water uses within the county are of primary importance to the county's economic and cultural well-being. Therefore, transfers in water uses should be carefully considered in relationship to the history, traditions, economics, and culture of Fergus County. Any federal or state proposed designation of Wild and Scenic Rivers and all federal and state policies regarding riparian management in Fergus County shall be coordinated with the county commission. Federal and state agencies managing waterways and wetlands containing endangered or threatened species shall coordinate their management activities and plans with the County Commission to the maximum extent of the law.
2. Fergus County shall promote, monitor and pursue development of water uses for existing as well as future water rights for agriculture, municipal, industrial, and domestic purposes. In addition, Fergus County shall promote alternative uses of water, including but not limited to recreation and hydro-electric power.
3. Fergus County recognizes the historical use of water by humans, vegetation, livestock, and wildlife within Fergus County.
4. To the maximum extent allowed by law, the Fergus County government shall be notified of all state, interstate, and federal actions that have any impact on the water of Fergus County prior to such actions being initiated. In addition, such proposed actions, including federal and state proposed Wild and Scenic River designations, shall be coordinated with the Fergus County Commission prior to adoption and implementation. It is the intent of Fergus County to assist federal and state agencies in the planning and management of Fergus County's natural, cultural, and economic resources.
5. Fergus County shall protect water quality by requiring solid, toxic waste, or hazardous sites comply with county policy. No radioactive waste sites shall be allowed in Fergus County due to unknown danger to the county water resources.
6. Fergus County will support all applicable regulations pertaining to the monitoring of water resources.

Appendix A

FERGUS COUNTY HISTORY

The area now known as Fergus County has fallen under many jurisdictions in the past two centuries. Originally part of the Louisiana Territory when President Thomas Jefferson purchased it from France in 1803, it was later part of the Territories of Nebraska, Dakota, Idaho and finally Montana. When the Territory of Montana was formed in 1864, it was necessary to divide it into counties. The First Territorial Legislature established the original nine counties, and seven more were added before the territory became a state. After several years of appealing to Congress for statehood, Montana joined the Union as the forty-first state on November 8, 1889.

The Judith Basin was the summer encampment for the Crow, Blackfeet, Nez Perce, Flathead and various other Native American tribes for at least a century before the Lewis and Clark expedition in 1805. The present location of Lewistown was the center of Indian encampments and the gathering place of many Indian tribes, owing to its splendid access to wood, water, grass and abundant game.

With a treaty pending to locate the Crow Indians on a reservation in the Judith Basin, Nelson Story, Sr. and Charles W. Hoffman of Bozeman sent Peter Koch to the Judith Basin to build a trading post for the new Crow Agency. The site was on Trout creek, now Big Spring Creek, near the mouth of Little Casino Creek and was named Fort Sherman.

But, the treaty was not ratified, and Fort Sherman was sold to the Dawes brothers who then sold to Alonzo Reed and John Bowles. Reed and Bowles floated the dismantled Fort Sherman down Big Spring Creek and rebuilt on the site where the Carroll Trail crossed Big Spring Creek. They operated there under the name of Reed and Bowles from Nov. 1874 to 1880. In 1880 Reed and Bowles dissolved their partnership and in 1881 Reed returned to the Fort Sherman site and ran a trading post and post office there under the name of Reed's Fort.

The 7th United States Infantry came to the area in the summer of 1874 and established Camp Lewis (at 311 W Main in the present town of Lewistown). Camp Lewis was established to guard the Carroll Trail, which stretched from Carroll, Montana located on the Missouri River above the Musselshell to Reed and Bowles' Trading Post, through Judith Gap to Fort Logan and on to Helena. Camp Lewis was named in honor of Major William H. Lewis, but the major was never stationed in the camp. After 1881, the community on Big Spring Creek was commonly known as Lewistown.

“In 1879, some 25 Metis families, traveling in Red River carts, ended their circuitous journey from Canada to Big Spring Creek. These Metis, descendants of the French and Indian, arrived in Central Montana to establish their first permanent settlement before any appreciable white migration occurred. ‘Big Spring Creek’ had 150 Metis families. The present site of Lewistown was taken as homesteads by Francis A. Janeaux and Paul Morase...” (From Lewistown Historic Resource Survey by Ellen Cornwall and Kenneth R. Sievert)

In the spring of 1885, during the 14th Legislative Assembly, Montana Territory, a bill sponsored by the Honorable James Fergus, delegate from Meagher County was introduced and passed. This bill created Fergus County out of the northeastern part of Meagher County. The new county became operative on December 6, 1886 through the selection of officers on November 2, 1886. The following men were chosen to hold office:

Sheriff: John Beck	Clerk of District Court: Charles S. Fell
Clerk & Recorder: Wm. H. Kelly	Probate Judge: Daniel A. Meagher
County Attorney: Frank E. Smith	Assessor: Michael Gurnett
Surveyor: L.W. Eldridge	Coroner: A. W. Sifton
Superintendent of Schools: David Galbreath	
Public Administrator: S. W. Darling	

The new county covered an area approximately 130 miles from east to west and 90 miles from north to south at the longest points. It contained 209 townships, over 7,524 square miles and 4,814,000 acres. The original Fergus County was subsequently divided into what are now entirely or partly the counties of Musselshell, Petroleum, Judith Basin, Wheatland, Golden Valley and the present Fergus County. The size of Fergus County at its inception was greater than many of the New England states.

Lewistown, with a population of 125, was picked as the county seat in 1886. By 1888, the population had grown to almost four hundred people. Lewistown became an incorporated city in 1899 and at that time had a population of over nine hundred people.

Fort Maginnis was established in 1880 to provide military protection for the settlers in the Judith Basin. The fort site was located northeast of Gilt Edge. The soldiers were never very successful in controlling either the Indians or outlaws and was abandoned in 1889. At a later date everything at the fort, including buildings, were sold at auction.

Mining developed around Lewistown when gold was discovered in the Judith Mountains in the 1880's. Maiden became a bustling town of 1500 people. During this period Maiden was larger than Lewistown. Gold was discovered in Gilt Edge in 1893. The Gilt Edge Mill was the first mining site in Montana and

one of the first in the United States to use the newly developed cyanide process for low grade ore. Kendall, north of Lewistown, was also an active mining community. Mining continued there until World War II. Utica began operations in about 1879 near the world famous Yogo Sapphire Mines, which were later discovered in 1895. Here many millions of dollar's worth of blue sapphires were supplied to the world market.

Cottonwood was one of the first homestead communities, and was a thriving village until it was bypassed by the railroad in 1903. At one time it was in contention to be the county seat of Fergus County.

The "Jawbone" or Montana Central Railroad reached Lewistown in October, 1903. Arrival of the railroad transformed the livelihood of the entire county. Real estate values and population increased. As the number of homesteaders grew, from 1903 to 1919, Lewistown became more and more the merchandising and distributing center for Central Montana. In 1912, the Great Northern built its spur from Moccasin to Lewistown.

It was during this period that the Croatian stonemasons put their stamp on Lewistown and many of the county's small towns. Lewistown was actually dubbed "The Stone City" because of the major buildings constructed by these craftsmen from local sandstone.

Ethnic groups that came to Fergus County were many and varied and all made valuable contributions to its early success.

At one time Fergus County supported a huge variety of businesses. Some of those that are no longer in existence are: an Air Force Base, two gypsum mines, gold mines, small silver mines, lumber mills, a school of nursing, two railroads, grain elevators in almost every small town, as well as three in Lewistown, men's clothing stores, a flour mill, a bus station, many "corner" grocery stores, creameries and multiple meat processors.

At the beginning of the 21st century the Fergus County seat and surrounding area is in a transition phase. With the upgrades to the transportation system and reduced railroad service, commodities for the community are brought in via semi-trucks. Additionally, with better roads and vehicles, travel to the larger communities is not the hardship it once was. Updates in communications have allowed the rural population to request and provide goods and services via phone and internet. Increases in small, clean manufacturing businesses and other cottage industries are revitalizing the local economy.

Fergus County now covers approximately 4,253 square miles and 2,765,685 acres. It is 70 miles north to south at the longest distance and 90 miles across the longest east to west distance. Farming and ranching remains

Fergus County's primary industry and recreational activities like hunting and fishing are still an important part of our culture.

Montana in the Making, Newton Carl Abbott, Copyright 1959, 12th edition.
A Sketch of Lewistown, Montana History (Indian Days-1884), Anna Zellick and John R. Foster, Copyright, 1980.

Early History of Fergus County, Discovery and Settlement, Dave Hilger, 1923-1924.

Taxable Valuation Study, Sue Elings, 2001.

Montana History, Shirley Barrick, 1984

Lewistown Area Chamber of Commerce

Fergus County Historical Sites Inventory and Big Spring Creek Planning Area Historical Inventory, 1976.

A Short History of Lewistown, Robert L. Dissly, 1979.

Appendix B

-The Mining Law: Summary

The 1872 Mining Law (as amended) governs locatable minerals in the Fergus County Planning Area. The BLM must approve any Plan of Operations or Notice on all public land. Except for areas withdrawn or otherwise segregated from mineral location, all BLM-administered mineral estate remains open for prospecting and development of locatable minerals. Development is subject to the regulations contained in 43 CFR 3809.

History

The General Mining Law of 1872 (17 Stat. 91) is the authorizing act for mineral exploration and development in the planning area. The origin of the Mining Law can be traced to the 16th century and reflects close ties to English and Spanish traditions.

Early American colonial charters contained outright grants of mineral land to settlers; however, these grants were accompanied by certain permanent reservations of precious metals to the sovereign. This formed the basis for the early traditions and customs regarding mineral rights for the colonies in the eastern part of United States until early 1800's.

In 1849, there was no formal mining law in the United States. Congress passed several leasing or sales acts of limited duration for gold, silver, lead, and iron. These acts were administered by the War Department. In 1849, when the California gold rush began, miners were technically in mineral trespass when they located claims on the public domain. The gold rush brought into conflict the two mining traditions. In 1860, the silver strike in the Comstock Lode in Nevada started a second mining rush to the West, opening up further conflict between the two mining traditions. As eastern interests were financing the Comstock Lode as well as the California Mother Lode, the question of security of title and tenure became a major political issue in Congress.

From 1865 to 1885, congressional policy for the public lands focused on encouraging westward migration of people to settle and develop the West. In furthering this policy a series of statutes was passed including various homestead acts, agricultural entry laws, soldier compensation acts and several acts designed to emphasize mineral exploration and development.

On July 26, 1866, the first mining law was passed as the Lode of 1866 (14 Stat. 251). This act provided for the entry and location of lode claims, assessment work and patents for lode claims.

The Placer Act was passed on July 9, 1870. It provided for the entry and location of placer claims on non-agricultural land, for location by legal description, and patent.

These two acts were consolidated, with amendments, into the General Mining Law of May 10, 1872. This statute is the basis for appropriation of mineral resources from the public domain today.

Principles

The Mining Law consists of five basic elements: discovery of a valuable mineral, location of mining claims, recordation of claims, maintenance – performance of annual requirements on claims, and patenting of the mineral, and possibly surface estate to the claimant.

Discovery

There is no federal statutory definition of what constitutes a valuable mineral deposit, but several judicial and administrative rulings or declarations on the subject have been made. In 1894 in the case of *Castle v. Womble*, the Department of the Interior established the “prudent person rule.” This rule states:

“...where minerals have been found and the evidence is of such a character that a person of ordinary prudence would be justified in the further expenditure of his labor and means, with a reasonable prospect of success in developing a valuable mine, the requirements of the statutes have been met.”

This definition was approved by the United States Supreme Court in 1905.

In 1968 in the case of *U.S. v. Coleman*, the Supreme Court approved the marketability test as a complement to the prudent person rule. This test requires a showing of marketability to confirm that a mineral could be mined, removed and marketed at a profit. In other words, the marketability test takes into account economics, requiring the claimant to show that there is a reasonable prospect of selling material from a claim or a group of claims. It is not necessary that the material has been sold or is selling at a profit, but that there is a reasonable likelihood that it could be sold at a profit. Demonstrating an established market is not difficult for precious metal commodities.

Some minerals, such as bentonite, can be classified as either locatable (uncommon variety) or salable (common variety), depending on the characteristics of the deposit. To classify a mineral as locatable, the 1968 ruling from *U.S. Minerals Development Corp.*, 75 ID 127 (1968) stated that the mineral must meet the following characteristics: In 1969, *McClarty v. Secretary of the Interior* (408 F.2d 907, 908) set the following standards to distinguish locatable

minerals from salable minerals (Maley 1990): “There must be a comparison of the mineral deposit in question with other deposits of such minerals generally.

1. The mineral deposit in question must have unique property;
2. The unique property must give the deposit a distinct and special value;
3. If the special value is for uses to which ordinary varieties of the mineral are put, the deposit must have some distinct and special value for such use; and
4. The distinct and special value must be reflected by the higher price which the material commands in the market place (or by reduced cost or overhead so that the profit to the claimant would be substantially more).”

Location

Mining claims may be located only by citizens of the United States, persons who have declared an intention to become citizens, and corporations organized under any State law. Mining claims may only be located on federal lands open to mineral entry under the mining laws, and only for mineral commodities considered to be locatable. A mineral is locatable if it is in the public domain, and is a metallic mineral, or of an uncommon variety valuable chiefly for chemical, rather than physical properties. Mining claims may be located before or after discovery of valuable mineral, on unappropriated public domain land. This claim grants the locator an exclusive possessory right to the mineral deposit. This possessory right allows the locator to continue to develop the claim as provided for by law. It is valid against the United States and other claimants only if a valuable mineral deposit has been discovered.

There are two main types of mining claims: lode and placer. Lode claims are located on indurate bedrock; while placer claims are usually located on loosely consolidated materials such as mineral bearing sands and gravels. Two additional types of mining claims may be located under the mining law: mill sites and tunnel sites. A mill site may be located on unappropriated public domain land that is non-mineral in character. It is used for the construction of a mill or reduction works, or for other uses reasonably incident to a mining operation. A tunnel site may be located on a plot of land where a tunnel is run to develop a vein or lode, or for the purpose of intersecting unknown veins or lodes. The actual location of a mining claim in Montana involves posting a notice of location at the discovery point and erecting corner posts, or monuments, on the ground to insure that the claim boundaries are readily identifiable.

Recordation

Prior to the Federal Land Policy and Management Act (FLPMA), claimants were required to file their location and assessment notices only in the office of the County Recorder, or County Clerk, in the county in which the claim was located.

Since enactment of FLPMA, notices of location and other notices must be filed with the BLM state office, as well as the appropriate county recorder. This requirement has allowed BLM to know the number, types, and their current status of claims located on public land. Failure to file these documents with the BLM is considered abandonment of a mining claim.

Maintenance

The General Mining Law of 1872 requires performance of an annual minimum of \$100 worth of labor or improvements to retain a possessory interest in the claim. An affidavit of assessment work must be filed with both the county recorder and with the BLM State Office. Owners of mill and tunnel sites are not required to file assessment work, but are required to file a notice of intent to hold the site.

Exploration and mining activities on BLM administered lands are subject to regulation under 43 CFR 3715, 43 CFR 3802, and 43 CFR 3809. These regulations require that an operator prevent unnecessary or undue degradation and perform reasonable reclamation.

Patents

It is not necessary to have a patent to mine to remove minerals from a mining claim. In fact, it is not even necessary to have a mining claim at all if the land is open to mineral entry. However, a patent gives the Owner exclusive title to the locatable minerals and, in most cases, to the surface estate. In order to obtain patent, the claimant must have performed at least \$500 worth of development work per claim; had a mineral survey and plat prepared at their expense; show they hold possessory rights by chain of title documents; publish a notice for potential adverse claimants to assert their claims; And demonstrate discovery of a valuable mineral deposit within the meaning of the Mining Law. Upon satisfactory completion of the above requirements, the claimant is given the opportunity to purchase the mining claim(s) at \$2.50 per acre for placer claims and \$5 per acre for lode claims.

Since October 1, 1994, Congress has imposed a budget moratorium on BLM acceptance of any new mineral patent applications. Until the moratorium is lifted, no new applications may be accepted by the BLM.

Appendix C

2016-12 - AN ORDINANCE FOR THE PROTECTION OF SOIL AND WATER FROM WILD, FREE ROAMING OR DOMESTIC BISON GRAZING IN FERGUS CONSERVATION DISTRICT Adopted October 1, 2016

Section 1. FINDING, POLICY AND INTENT.

- 1.) It is the finding of Fergus Conservation District that due to the migratory behavior of bison to search out desirable grazing forage, their social and other innate behaviors, bison grazing can create negative and lasting impacts on soil and water resources.
- 2.) Pursuant to MCA 76-15-102, it is the declared policy of this state to provide for the conservation of soil and soil resources of this state, for the control and prevention of soil erosion, for the prevention of floodwater and sediment damages, and for furthering the conservation, development, utilization, and disposal of water and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, preserve wildlife, protect the tax base, protect public lands, and protect and promote the health, safety, and general welfare of the people of this state.
- 3.) It is the policy of Fergus Conservation District to provide for the conservation of the soil and water resources of the district and the prevention of soil erosion, accelerated soil erosion and the prevention of sediment damage to the land, water and other resources within this conservation district.
- 4.) It is policy of Fergus Conservation District to stand with and endorse Montana Association of Conservation Districts' Resolution 13-03, dated December 20, 2013, that declares opposition to the establishment of wild, free roaming bison or buffalo in Montana.
- 5.) It is Fergus Conservation District's intent, in furtherance of the policy of the state of Montana and Fergus Conservation District, to protect the soil and water resources within the boundaries of the conservation district from unreasonable depletion and degradation of natural resources from grazing of wild, free roaming and domesticated bison.
- 6.) It is Fergus Conservation District's intent that all wild, free roaming and domesticated bison that are identified for transportation into the district be examined in advance of movement by a licensed veterinarian official to ensure animal health in accordance with the established disease testing protocols developed by Montana Department of Livestock and that each animal is certified to be disease free and brucellosis free.
- 7.) It is Fergus Conservation District's intent, in order to carry out the above policies and intents that this ordinance applies to existing as well as future grazing by all bison.

Section 2. PURPOSE It is the purpose of this ordinance to:

- 1.) Enact a soil conservation and erosion prevention program for the conservation and protection of land, water, and other resources of the Fergus Conservation District from the grazing of wild, free roaming and domesticated bison;
- 2.) Encourage the use of land in accordance with its capabilities and treat it according to its needs;
- 3.) Prevent the degradation of rangelands, cultivated lands, waterways, drainages, lakes, reservoirs, and riparian areas.
- 4.) Protect the tax base;
- 5.) Protect and promote the health, safety and general welfare of the people;
- 6.) Ensure that soil resources are preserved for the production of food and fiber for the present and future generations of this district.

Section 3. AUTHORITY.

- 1.) Pursuant to MCA 76-15-702, Fergus Conservation District has the authority to formulate regulations governing the use of lands within its boundaries in the interest of conserving soil and water resources and preventing and controlling erosion.
- 2.) In pertinent part, Fergus Conservation District is authorized to adopt regulations that include any means, measures, operations, programs as may assist conservation of soil and water resources and prevent or control erosion in the district.

Section 4. DEFINITIONS.

- 1.) "Bison" means bison or buffalo that are feral, wild, free roaming or domestic or classified as an indigenous species or species in need of special management or species in need of disease control.
- 2.) "Management" or "Conservation plan" means the plan developed by the landowner/land occupier and approved by the board of supervisors which describes the suitability of the land for its intended uses and the measures required to prevent the spread of disease and, to the extent possible, erosion from occurring on the land for which the plan is developed.
- 3.) "District" or "conservation district" means the Fergus Conservation District, a governmental subdivision of the state of Montana and a public body, corporate and politic, exercising public powers.
- 4.) "Erosion" means the process by which the surface layer of the land is worn away by the action of water, wind, gravity, or a combination thereof.
- 5.) "Land occupier" means any person, firm, corporation, non-profit organization, municipality, or other legal entity who holds title to, or is in possession of, any lands lying within the district, whether as owner, lessee, renter, tenant, or otherwise occupier of land. Where the term land occupier is used in this

ordinance, the term shall include both the owner and the occupier of the land when they are not the same person.

6.) "Person" means any natural person, individual, corporation, firm, partnership, association, municipality, non-governmental organization (NGO), governmental or non-governmental agency, political subdivision, or other legal entity.

7.) "Qualified elector" means an individual qualified to vote under state law residing within Fergus Conservation District.

8.) "Sediment" means the solid material, both mineral and organic, that is in suspension, is being transported, or has been moved from its site of origin by air, water, gravity, or ice, and has come to rest on the earth's surface.

9.) "Sediment damage" means the economic or physical damage caused to any person's property or natural resource resulting from erosion.

10.) "Sedimentation" means the process or action of depositing sediment into a waterway.

11.) "Supervisors" or "district supervisors" means the Fergus Conservation District board of supervisors.

12.) "Water" means any and all surface water and groundwater which are contained within, flow through, or border upon the Fergus Conservation District.

Section 5. APPLICABILITY. This ordinance applies only to bison grazing on land within the Fergus Conservation District. The provisions of this ordinance have the same force of law and effect of law over publically owned lands within the district and shall be in all respects observed by the agencies administering such lands. Unless otherwise provided, this ordinance applies retroactively to bison placed in the Fergus Conservation District regardless of the date of bison placement.

Section 6. COMPLIANCE WITH ORDINANCE.

1.) No land occupier or person may cause or conduct, contract for, or authorize any bison grazing activity without an approved management and conservation plan from the Fergus Conservation District.

2.) Bison grazing of all land within the district shall be carried out under a management and conservation plan developed under Section 7 and filed with the Fergus Conservation District.

3.) No lands may be grazed by bison if:

- a) the lands do not have sustainable or suitable habitat/forage for bison;
- b) the lands do not have an adequate and sustainable water supply, or an approved plan to provide an adequate and sustainable water supply for the maximum number of bison to be grazed on the land or;
- c) the animals are not disease and brucellosis free; or
- d) grazing will result in sediment damage to lands, drainages, waterways, reservoirs, riparian areas, and other storage facilities; or
- e) the land occupier does not have perimeter fencing to keep bison from leaving the land upon which they are placed.

Section 7. MANAGEMENT AND CONSERVATION PLANS.

- 1.) Prior to the placement of bison on lands within Fergus Conservation District:
 - a. A management and a conservation plan must be developed by the land occupier and submitted via the transmittal letter to the Fergus Conservation District supervisors for approval that;
 - i. includes site location information where the bison will be maintained, including a legal description of the location, number of acres to be grazed, carrying capacity (animal units), a description of wildlife habitats in the area and a statement of the bull/cow ratio to be maintained;
 - ii. includes a map showing the location of fences, watering facilities (dams, creeks, stock tanks, stock wells, etc.), soil types, and location of highly erodible lands;
 - iii. addresses bison population objectives and defines a means to control herd size and distribution, wildlife habitat management, type of fencing to be used, disease monitoring, and a bison escape and recovery plan;
 - iv. meets or exceeds the USDA Natural Resource and Conservation Service technical guides for Fergus County in existence at the time of placement of bison on land within Fergus Conservation district;
 - v. addresses wind erosion, water erosion, the protection of grass waterways. The proper grazing rates, and any other management practices which protect the land and water resources from degradation.
 - vi. includes the management, techniques, and methods for control of accelerated erosion and sediment damage resulting from the activities of grazing bison; and
 - vii. includes, if no applicable USDA technical guidelines are available, a management and conservation plan appropriate and consistent with the policy and purpose of this ordinance.
 - b. All bison must be tested and certified healthy by a licensed veterinarian and be disease and brucellosis free and be identified as such;
 - c. A description of the health and disease testing plan that will be implemented;
 - d. A perimeter fence must be built to keep bison from leaving the land on which they are placed;
 - e. Adequate water must be available to include a water management plan in case of drought; and
 - f. Bison must be branded, tattooed, tagged or otherwise identified to track its health status.

2.) The land occupier's management and conservation plan must uphold and be consistent with the provisions of Presidential Executive Order 7398, dated January 17, 2001, that created the Upper Missouri River Breaks National Monument and comply with the Bureau of Land Management's Resource

Management Plan that governs management and protection of monument lands and resources located in the Fergus Conservation District's area of jurisdiction.

3.) The current USDA Natural Resources Technical Guide shall be available for public use during normal office hours at the conservation district office located in Lewistown, Montana.

4.) The Fergus Conservation District will provide written notification to the land occupier of the Board of Supervisor's decision on the proposed management and conservation plan.

Section 8. COMPLAINTS.

1.) A complaint signed by a land occupier may be filed against any other land occupier or person alleging that bison are grazing on land within the district in violation of this ordinance.

2.) The complaint must:

a. include the name and address of the complainant;

b. be in writing, signed, and delivered to the district office by mail, email or in person;

c. include location of the alleged violation;

d. include the date of the alleged violation, if known;

e. describe the source, nature and extent of any erosion or sediment damage that is alleged to have occurred or that is occurring; and

f. describe whether degradation of the lands has occurred or is occurring.

g. describe, if applicable, the alleged violation(s) of the management and conservation plan in place, including violations of the bison health and disease testing plan and protocols and certification requirements.

3.) The complaint is a public record that is maintained in the district office.

Section 9. ACTION ON A COMPLAINT.

1.) Within 5 working days of the receipt of a correct and complete complaint, the supervisors shall notify the alleged violator of the complaint.

2.) The supervisors shall set a date to conduct an onsite inspection within 10 working days of receipt of the correct and complete complaint to determine if an actual violation exists. The alleged violator, or a designated representative, may participate in the onsite inspection.

3.) At the onsite inspection, the supervisors shall acquire and report on the following areas that are applicable to the alleged violation and/or include any other matters or issues deemed applicable to the investigation:

a. the location of and estimated amount of acreage involved in the alleged violation;

b. the description of the source, nature and extent of any type of erosion or sediment damage;

c. identification of the type of land involved, including, but not limited to, rangelands, croplands, water ways/drainages, riparian areas, reservoirs, creeks and dams;

- d. the type of fencing, if any, being used to control the bison and keep them from leaving the land upon which they were placed.
- e. whether a management and conservation plan has been developed, is in place and is being implemented in accordance with Section 7;
- f. the number of animal units and bull/cow ratio grazing on the land;
- g. whether adequate water supply is available;
- h. whether a health and disease testing plan is in place and being implemented; and
- i. whether bison are certified to be disease and brucellosis free and can be identified as such.

4.) Based upon subsection (3) and compliance with Section 7, the supervisors shall determine whether there is a violation of this ordinance. The alleged violator and the complainant must be notified of the supervisor's determination within 15 working days of their determination. If there is a violation, the violator must be given a violation notice by certified mail. The supervisors shall include with the violation notice the corrective actions necessary to resolve the violation.

a. If the supervisors determine that the degradation of the land or waters is occurring, the violation notice must include an order requiring the cessation of degradation of the land.

b. If degradation of the land continues after an order to cease has been issued, the supervisors may petition the District Court under MCA 76-15-709 for the enforcement of the ordinance and for such other temporary relief as may be necessary.

c. If the violator ceases the land degradation pursuant to the supervisor's order or if the violation pertains to matters other than the degradation of land, the supervisors, or their designated representative, shall meet with the violator within 15 working days of the notice of violation to:

i. discuss solutions to implement the corrective actions identified in the violation order; and

ii. specify a reasonable length of time to complete any corrective measures identified in the agreed to solution.

iii. a meeting under this subsection may be continued from time to time in order to reach an agreed to solution.

5.) If the violator and the supervisors do not agree to a solution, within 10 working days of the conclusion of the meeting, the supervisors shall notify the violator of the corrective actions necessary to resolve the violation. The violator is not entitled to any further meeting under Section 10.

6.) The supervisors may extend the time periods in this Section as they deem appropriate.

Section 10. REVIEW OF SUPERVISORS' DETERMINATION.

1.) A person determined to be in violation and who disagrees with the supervisor's determination and who is issued an order to cease under Section 9 (4) from further activity may request in writing a meeting with the supervisors.

The request must be made within 15 working days of receipt of the violation notice. The supervisors shall hold a meeting with the violator to review the information set forth in Section 9 (3).

2.) Within 15 working days of a meeting held under this Section, the supervisors shall notify the person determined to be in violation of the ordinance by certified mail of the result of the supervisor's review under subsection (1) or (2) and the remedy to be implemented by the violator.

3.) A person who does not comply with a remedy determined by the supervisors under Section 9 or this Section shall be subject to enforcement pursuant to Section 11.

4.) The supervisors may extend the time periods in the section as they deem necessary.

Section 11. ENFORCEMENT IN DISTRICT COURT.

1.) The supervisors may bring enforcement in district court as provided in MCA 76-15-709 against any person failing to comply with the ordinance and any corrective action or order issued by the supervisors.

2.) The supervisors may seek an enforcement order requiring the removal of bison against any person whose bison grazing practices are degrading lands which results in accelerated erosion, sediment damage, or damage to waterways, drainages, reservoirs or lakes, and riparian areas.

Section 12. BOARD OF ADJUSTMENT.

1.) A board of adjustment shall exist to hear and determine matters filed pursuant to MCA 76-15-723 through MCA 76-15-725.

2.) The board of adjustments shall be structured as set forth in MCA 76-15-721 through MCA 76-15-722.

3.) All meetings of the board of adjustment shall be open to the public and its records and proceedings shall be public.

Section 13. BOARD OF ADJUSTMENT – PETITION FOR VARIANCE.

1.) A petition may be filed for variance as provided in MCA 76-15-723, alleging that there are great practical difficulties or unnecessary hardships in complying with the land use regulations prescribed by the ordinance.

2.) Any qualified elector, person or land occupier against whom a complaint has been filed may petition the board of adjustment for a variance. The petition must be served upon the Fergus Conservation District and the Department of Natural Resources and Conservation. The Department of Natural Resources and Conservation will appoint a board of adjustment pursuant to MCA 76-15-721 to hear the variance.

3.) On the basis of findings and determination, the board of adjustment may order a variance from the terms of the land use regulations in their application to the lands of the petitioner that:

a. will relieve the great practical difficulty or unnecessary hardship;

b. will not be contrary to the public interest;

c. will be such that the spirit of the land use regulations is observed, the public health, safety, and welfare is secured, and substantial justice is done.

4.) An order of the board of adjustment may be appealed to district court pursuant to MCA 76-15-726.

Section 14. COMPLIANCE WITH THE STATE CONSTITUTION AND OTHER LAWS.

1.) Nothing in the ordinance shall be construed as exempting a person from the requirements of other local, state or federal laws. To the extent that the requirements of the ordinance conflict with any applicable local, state or federal requirements; the local, state or federal requirements shall apply.

2.) This ordinance is intended to be supplemental to Title 81, chapter 4, part 2, MCA.

3.) This ordinance is enacted by the Fergus Conservation District, mindful of its constitutional obligations:

a. under Article II, section 3 of the Montana constitution, specifically the inalienable right for all persons to acquire, possess, and protect property; and

b. under Article IX, Section 1 of the Montana constitution, specifically as a remedy for the protection of the environmental life support system from degradation and to prevent unreasonable depletion of natural resources.

Section 15. LIABILITY.

1.) The Fergus Conservation District, conservation district supervisors, and conservation district employees are immune from suit for any liability that might otherwise be incurred or imposed for an action or omission committed while engaged in conservation district activities under the ordinance as more fully set forth in MCA 76-15-320.

2.) No person or land occupier acting in compliance with the ordinance is relieved of liability for damage to any person or property as the result of the person's or land occupier's negligent acts or omissions.

Section 16. ALTERATION OR REPEAL OF ORDINANCE.

The ordinance may only be amended, supplemented or repealed by the filing of a petition as provided in MCA

76-15-705. Referenda on the adoption, amendment, supplementation, or repeal of any part of the ordinance shall not be held more than once in six (6) months.

Section 17. SEVERABILITY CLAUSE.

If a part of this ordinance is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of this ordinance is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

Appendix D

RESOLUTION NO. 3-2016

(For signed copy see the Fergus County Website)

A Resolution Determining Buffalo/Bison Designation for Fergus County and Requiring County Commission Authorization for any translocation of, buffalo/bison – (not considered livestock) by any entity.

WHEREAS, the Fergus County Commissioners are responsible for the health, safety and well-being of our county residents, and;

WHEREAS, the County of Fergus's leading industry is Agriculture and Fergus County is dependent on a strong agriculture economy;

WHEREAS, wild buffalo/bison leaving Yellowstone Park have created numerous management problems for the State of Montana. Any future distribution of wild buffalo/bison will potentially increase the problems, and;

WHEREAS, the only protection from wild buffalo/bison to Fergus County citizens, wildlife, open space and the Montana livestock industry, will come from the Montana Department of Livestock;

NOW, THEREFORE BE IT RESOLVED, All buffalo/bison in Fergus County will be considered domestic livestock, regardless of origin. As domestic livestock they will be under the same rules and regulations the Montana Department of Livestock uses for all classes of livestock. Buffalo/bison will be subject to any state or local laws that regulate livestock;

NOW, THEREFORE BE IT FURTHER RESOLVED, that we require authorization by the Fergus County Commissioners before any buffalo/bison, not considered Livestock, can be translocated in Fergus County by any entity.

PASSED AND ADOPTED this 11th day of April, 2016

Board of County Commissioners
Fergus County, Montana